IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kamal Kishore Joshi v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.5610/1991
under Articles 226 and 227 of the Constitution of India.

Date of Order : 5th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Tarun Joshi for Mr.J.P.Joshi, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

A mining lease was granted to the petitioner in his khatedari land by the Mining Engineer, Rajsamand under an order dated 27.6.1983. The petitioner started mining operations in the area concerned and also deposited mining royalty and dead rent for about a period of four years. In the fifth year he failed to deposit dead rent due to certain problems faced by him in mining operations.

The Mining Engineer, Rajsamand by an order dated 11.7.1986 cancelled the mining lease due to non-payment of dead rent. The petitioner being aggrieved

by order dated 11.7.1986 preferred an appeal before the Additional Director, Mines, Udaipur. The appeal preferred by the petitioner was accepted and the mining lease granted to the petitioner was restored with a penalty of Rs.1000/-. According to the petitioner he failed to get information with regard to acceptance of the appeal, therefore, he also failed to deposit the penalty imposed i.e. of Rs.1000/-.

The Mining Engineer by an another order dated 22.5.1987 cancelled the mining lease as the petitioner failed to deposit the penalty imposed by the Appellate Authority under the order dated 28.7.1987 while accepting the appeal preferred by the petitioner. The petitioner deposited the amount of Rs.1000/- on 28.7.1987 and thereafter he filed an appeal before the Additional Director, Mines at Udaipur on 3.8.1987. The Additional Director by an order dated 13.1.1988 without giving any notice of hearing consigned the appeal to record. The order passed by the Additional Director was not communicated to the petitioner.

The petitioner again filed an appeal before the State Government under sub-rule(2) of Rule 43 of the Minor Mineral Concession Rules, 1986. The appeal preferred before the State Government was barred by limitation, therefore, an application under Section 5 of the Limitation Act was also filed by the petitioner. The State Government rejected the

application under Section 5 of Limitation Act and while doing so also observed that the first appeal preferred by the petitioner was still pending before the Additional Director, therefore, no appeal could be entertained under Rule 43(2) of the Rules of 1986. The petitioner being aggrieved by order passed by the State Government dated 19.7.1991 has preferred the instant writ petition.

No reply to the writ petition has been filed on behalf of the respondents.

The contention of counsel for the petitioner is that the appeal preferred by him before the Additional Director was consigned to record by the Additional Director, meaning thereby, the same stood dismissed. The appeal was consigned to record in light of a peremptory order and as such the same is treated to be dismissed. There was no reason to treat that appeal pending before the Additional Director.

I have heard the learned counsel for the parties.

The order passed by the State Government is solely based on the assumption that the appeal preferred by the petitioner was pending before the Additional Director, however, in view of averments contained in the writ petition and also in the memo of

appeal it is apparent that the appeal was consigned to record by the Additional Director. The appeal consigned to record virtually amounts to dismissal of appeal as no effective order further could have been passed. The State Government without considering this aspect rejected the appeal preferred by the petitioner.

The State Government has also not considered the reasons given by the petitioner for condonation of delay in right perspective. The petitioner in an quite unambiguous terms stated that due to certain personal reasons and the reasons related to business he was at Bombay and, therefore, he came to know about the order passed by Additional Director at a belated stage. It is pertinent to note that the petitioner was availing a mining lease in his own khatedari land. He was operating in that area from a period of about five years. Before approaching to the appellate court he deposited all the money due with the competent authority including penalty of Rs.1000/-. Approach of the Government as a quasi judicial authority while considering an application for condonation of delay should be pragmatic. Every effort should be made to adjudicate grievance of a person aggrieved on merits. Such adjudication could be denied if due to delay on part of person aggrieved rights have been accrued in favour of third party or delay caused was because of ulterior motives or because gross negligence on part

of the aggrieved person. There is nothing on record on basis of which it can be said that the delay caused was because of some ulterior motives or because of gross carelessness of the petitioner.

In my considered opinion the State Government acted arbitrarily and also exercised its power in colourable manner while not condoning the delay in filing the appeal. The State Government also erred by treating the appeal preferred by the petitioner before the Additional Director as pending though the same was consigned to record.

In view of it, this writ petition is allowed. The order passed by the State Government dated 19.7.1991 is hereby quashed. The State Government is directed to decide the appeal preferred by the petitioner afresh on merits.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.